P.R. No. 627/05
Presented by Shri V.G. Namaskar
dated 22/03/05

(1)

BEFORE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR [C.G.]

M.A. 297 **/2005** Single Bench

Single Bench

Appellants

[Plaintiffs]

1. JHAGGAR SINGH KATHLE

aged about 56 years, s/o. Late Rungu Khattle Scheduled-Caste-Satnami, R/o. Village-Rahangi, Indrapuri Gram Panchayat, Rahangi, Tahsil-Belha, Distt. Bilaspur (C.G.)

2. SMT. BHOORIBAI

aged 65 years, widow of – Late Mahadeo Scheduled-Caste-Satnami, r/o. Village-Rahangi, Gram Panchayat-Rahangi, Tahsil-Belha, Distt. Bilaspur (C.G.)

VERSUS

RESPONDENT :

[Defendant]

STATE OF CHHATTISGARH

Through – Collector, Tah & Distt. Bilaspur (C.G.)

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MEMO OF APPEAL

(Under Order 43 Rule (r) C.P./C.)

102

HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A. No. 299 of 2005

Appellants : **Jhaggar Singh Kathle and others.**

VERSUS

Respondents : **State of Chhattisgarh.**

Shri V.G. Tamaskar learned counsel for the appellants.
Shri J.D. Bajpai learned GA for respondent.

ORDER

(Passed on २२-11-2005)

Dhirendra Mishra, J

The appellants have preferred this appeal under Order 43 Rule 1 of the CPC as the application for temporary injunction filed under Order 39 Rule 1 and 2 of the CPC has been rejected by Additional District Judge Bilaspur vide order dated 16.2.2005 passed in MJC No. 46/2004.

Brief facts of the case are that the appellants filed a civil suit before the Court below for declaration and perpetual injunction averring that father of the plaintiff No.1 obtained possession of the suit property as encroacher in the year 1960. Plaintiff/appellant No.1 is in possession of a plot admeasuring 1824 sq.ft. whereas plaintiff/appellant No.2 is in possession of a plot admeasuring 750 sq.ft. They are in peaceful possession over the said plots for last more than 40 years and as such they have perfected title and the defendant has no authority to dispossess them. The plaintiffs were in possession of the said property well within the knowledge of the defendant but they have never been dispossessed by it. Tehsildar, Belha issued a notice on 9.11.2004 for eviction of the plaintiffs from the encroached land and therefore the above suit had been filed. The appellants/plaintiffs also moved an application for temporary injunction under Order 39 Rule 1 and 2 of the CPC and in its reply the defendant/State

disputed the claim of the plaintiffs that they were in possession of the said property for last more than 40 years and submitted that the appellants are encroachers and they encroached upon the suit land in the year 2003-2004. Ejactment proceedings under section 248 of the M.P. Land Revenue Code have also been initiated by Tehsildar, Belha. In revenue records the property in question has been entered into the name of PWD, Government of Chhattisgarh. In support of the reply to the application for temporary injunction an affidavit of Tehsildar has also been filed.

Learned Additional District Judge after hearing the parties rejected the application for temporary injunction by recording a finding that the plaintiffs have not filed any document in support of their contention that they are in possession of the suit property for last more than 40 years except their own affidavit and from the documents available on record possession of the plaintiffs over the suit land is not established. So far as the other documents filed by the plaintiffs regarding village Kotwar's diary showing entries of the birth of sons and daughters of the plaintiffs, voter identity card and school records etc. are concerned, by the said documents it is only established that the plaintiffs are residing at village Rehngi but they may not be taken as evidence to show that they are in possession of the said plots since 1960 and accordingly no prima facie case is made out in favour of the plaintiffs. The application for temporary injunction has been rejected by the impugned order also on the ground that no temporary injunction under Order 39 Rule 1 and 2 of the CPC can be granted where no relief can be granted under sections 38 and 41 of the Specific Relief Act in view of the M.P amendments in Order 39 Rule 1 and 2.

2. Learned counsel for the appellants relying on the various judgments of the Supreme Court submits that where the possession of the plaintiffs is established, the status quo should be maintained till the disposal of the suit. He further submits that

the plaintiffs are in possession of the plots in question since 1960 and they are residing there since then and taking into consideration the uninterrupted possession for last more than 40 years over the land in question it is prima facie established that they have perfected their title by way of adverse possession. Relying upon the decision of the Supreme Court in the matter of **Rame Gowda (Dead) by LRs Vs. M. Varadappa Naidu (Dead) by LRs and another** reported in **(2004) 1 SCC 769** learned counsel for the appellants submits that the plaintiffs are in settled possession over the property in question and as such they have perfected their title on the basis of continuous possession for last more than 40 years and thus the Court below ought to have protected the possession of the plaintiffs by passing the order of temporary injunction. He further relied upon a decision of the Madhya Pradesh High Court in the matter of **Waheed Khan Vs. Gyani Bai and others** reported in **2005 (3) MPHT 91** and submits that there is prima facie case in favour of the appellants/plaintiffs as they are in possession of the property mentioned above since 1960 and therefore, balance of convenience lies in their favour. He further submits that if the plaintiffs/appellants are dispossessed from the property during the pendency of the suit, irreparable injury is bound to be caused to them as also to their family members as the suit pending before the trial Court will become infructuous and meaningless after dispossession.

3. On the other hand learned counsel for the respondent/State supporting the impugned order submits that there is nothing on record to establish that the appellants were in possession of the property since 1960 and the finding in this regard is as per the material available on record and as such the appellants have no prima facie case in their favour and the Court below has rightly rejected the application for temporary injunction.

4. I have heard learned counsel for the parties and perused the material available on record.

5. Case of the plaintiffs is based on the averment that they are residing in the house constructed over the disputed plots since the time of their ancestors i.e. from the year 1960 without any objection from any quarter within the full knowledge of the defendant and no eviction proceedings have ever been initiated against them during all this period. From the documents filed by the plaintiffs it is established that they are residing in village Rehngi since 1960 and the children of the plaintiffs were born and brought up in that very village. It is not the case of the defendant that the plaintiffs were residing in some other dwelling house in village Rehngi.

6. Case of the plaintiffs is that they have perfected their title by way of adverse possession. The factum of adverse possession has to be established by oral and documentary evidence during trial which is going on in the trial Court. The possession of the plaintiffs over the land in question is not disputed by the defendant.

7. Thus the findings of the trial Court that there is no documentary evidence to the effect that the plaintiffs are in possession of the land in question since the year 1960 is based on improper appreciation of evidence available on record. The material available on record is yet to be established by oral evidence to be led by the parties.

8. In view of the aforesaid discussion this Court is of the opinion that the learned trial Court ought to have protected the status quo as it existed on the date of filing of the suit till the disposal of the same.

Consequently, the impugned order is set aside and parties are directed to maintain status quo till the disposal of the suit. Trial Court is directed to dispose of the suit expeditiously. Appeal thus stands allowed.

Sd/-
Dhirendra Mishra
Judge